

Memorandum of Understanding

between

Solicitors Regulation Authority

and

Insurance Fraud Bureau

Introduction

1. The Solicitors Regulation Authority (SRA) and the Insurance Fraud Bureau (IFB) (“the parties”) are committed to working together to achieve the appropriate public interest outcomes in relation to combatting organised insurance fraud and the regulation of legal services. In support of that aim, this memorandum of understanding (“Memorandum”) sets out the framework for cooperation, information sharing and communications between the SRA and the IFB.
2. The aims of this Memorandum are, in particular:
 - a. To assist both parties in their investigation work in the public interest so far as such assistance is lawful;
 - b. To provide a framework for the lawful flow of information between the SRA and the IFB.
3. The SRA and the IFB recognise and respect their differing responsibilities, operational priorities and constraints and confidentiality requirements. However, in the public interest they commit themselves to professional co-operation and the lawful exchange of information to assist with the prevention, detection, investigation and taking of action in relation to fraud or other criminal activity involving the regulation of legal services and addressing insurance fraud.
4. This Memorandum does not cover or affect any other memoranda or agreements or arrangements which exist between the SRA and the IFB.

Legal status and effect

5. Nothing in this Memorandum shall, or is intended to:
 - a. create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
 - b. create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or prevent either of the parties from complying with any law which applies to them; or
 - c. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
 - d. create any legitimate expectation on the part of any person that either of the parties to this Memorandum will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this Memorandum in good faith and intend to act in accordance with its terms on a voluntary basis.

Roles and responsibilities

6. The SRA is the independent regulatory body established by the Law Society for the regulation of legal services by law firms and solicitors in England & Wales. The SRA's powers arise from various statutes and regulations including the Solicitors Act 1974, the Administration of Justice Act 1985, the Courts and Legal Services Act 1990, the Legal Services Act 2007 and the SRA's Handbook: <http://www.sra.org.uk/solicitors/handbook/welcome.page>
7. The SRA has statutory and rule-based powers to require the production of documents or information, such as section 44B of the Solicitors Act 1974 and section 93 of the Legal Services Act 2007.
8. The SRA may inspect material that is subject to a law firm's client's legal professional privilege (LPP) or confidentiality but may only use such material for its regulatory purposes. The SRA also protects the LPP and confidentiality of clients. LPP material will not be disclosed by the SRA to any other person other than where necessary for its regulatory purposes. Material that is not subject to LPP may be disclosable in the public interest, in the absolute discretion of the SRA, including material comprising communications in furtherance of crime or fraud.
9. The IFB was established in July 2006 by the UK insurance industry to provide a cost effective tactical solution for the detection and prevention of organised, cross-industry fraud
10. The IFB seeks to identify organised insurance fraud through the analysis of industry data and co-ordinates the industry response to the activities of criminal fraud networks, working closely with the police and industry regulators.
11. The IFB does not have statutory powers, however, it is listed in Section 68 of the Serious Crimes Act as a specified anti-fraud organisation (SAFO).

Information sharing

12. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular each party must ensure that any

disclosure of personal data pursuant to these arrangements fully complies with the Data Protection Legislation. The MoU sets out the potential legal basis for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

13. Where it is lawful and in the public interest to do so (and so far as is reasonable and practicable), the parties agree to disclose information to the other for the following purposes:
 - a. To enable the assessment of risk of fraud to the public with the aim of minimising the risk of fraud or other criminality and preventing insurance related fraud;
 - b. to enable alleged criminality, misconduct, breach of the SRA principles or other failures (including breaches of the civil law) to be properly investigated and decided upon by either party;
 - c. for the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not; and
 - d. to enable IFB to identify and disrupt professional enablers involved in organised insurance fraud;

provided that the recipient is reasonably considered able to take preventative, regulatory or other proper action upon the information.
14. The recipient of information received from the other party will:
 - a. Comply at all times with “Data Protection Legislation” which includes all applicable privacy and data protection laws including the General Data Protection Regulation (GDPR) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and any relevant codes of conduct or certifications;
 - b. keep the information secure;
 - c. use the information only for proper purposes, such as regulatory, disciplinary, or other legal investigations or proceedings; and
 - d. liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.
15. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police or CPS.
16. The parties agree to ensure that disclosures to the other party are lawful.

17. The SRA may seek information from IFB pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.
18. The disclosing party also agrees to notify the recipient of:
 - a. any restrictions on the use to which the information can be put, and
 - b. any restrictions which apply to the onward disclosure of the information, and
 - c. In the absence of such notification, the receiving party may assume that there are no such restrictions (in addition to any restrictions that apply as a matter of law).

Practical exchange of information

19. The SRA has a Fraud and Confidential Intelligence Bureau (FCIB) whose role includes the lawful facilitation of intelligence and information sharing with other bodies.
20. All information exchanged between the parties should be passed via a nominated Single Point of Contact (SPOC) who shall be notified by the parties to each other in writing from time to time.
21. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

Procedure for sharing information

22. The SRA and IFB shall ensure that procedures are in place relating to information:
 - a. to make accidental compromise or damage to the information unlikely during storage, handling, use, processing, transmission or transport;
 - b. to deter deliberate compromise or opportunist attack; and
 - c. to dispose of or destroy in a manner to make reconstruction unlikely.
23. Each party will supply to the other their respective procedures for handling, processing, disposal and retention of any information which shall comply with the Information Commissioner's Office Data Sharing Code of Practice.

Protective marking

24. All information will be protectively marked as official sensitive and will not be disclosed wider than the original recipients without the consent of the party who supplied the information.

Transmission

25. Information can be transmitted over the telephone providing regard for overhearing is given and may be supplied by encrypted email or via an encrypted external storage device hand delivered in a double envelope with the protective marking shown on the inner envelope only to a named nominee agreed between the parties who will be sent the unlock password via email once receipt has been confirmed.

Storage

26. Data must be stored in accordance with each parties' Data Retention Policy and compliant with the Data Protection Legislation.
27. Information held in paper format must be kept under lock and key when not in the personal custody of an authorised person. The "need-to-know" principle will be strictly enforced. Information needs to be protected by two barriers, for example, a locked container in a locked room.

Additional assistance

28. Either of the parties may request so far as is reasonable additional co-operation in the following areas, and such requests shall be given due consideration:
 - a. sharing subject-matter expertise; and
 - b. supplying witness statements, expert advice or oral evidence for use or potential use in court or tribunal proceedings.

Security and assurance

29. The parties agree to
 - a. use the information only for proper purposes, such as regulatory, disciplinary, fraud prevention or other legal investigations or proceedings;
 - b. Where confidential material is shared between the parties it will be marked with the appropriate security classification as detailed in Paragraph 5.

- c. keep confidential the identity and contact details of any designated counter fraud personnel within IFB;
- d. store data securely;
- e. ensure that only people who have a genuine business need to see that information will have access to it;
- f. report data losses or wrongful disclosure to the SPOCs as soon as either party becomes aware of any such loss or disclosure.
- g. only hold the data for as long as it is needed for the purpose for which it was shared;
- h. destroy it securely in a manner to make reconstruction unlikely.
- i. seek to comply with the Information Commissioner's Office Data Sharing Code of Practice;
- j. liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person; and
- k. provide assurance that they have complied with these principles, upon request.

Data Protection legislation and Human Rights Act 1998 (HRA)

- 30. Both parties undertake to comply with the requirements of the Data Protection Legislation the HRA in the operation of this agreement and the common law principles of confidentiality and privacy. IFB and SRA will only share this information with another agency when the law allows it to do so such as when disclosure will aid its investigations to prevent or detect crime. Any information shared with another agency must not be disclosed further without the consent of the other party.
- 31. Where a request for information is received by either party under the Data Protection Legislation the recipient of the request will seek to consult with the other party where the information being sought under the request includes information obtained from, or provided by, the other party.

Freedom of Information (FOI)

- 32. The parties acknowledge that neither party is subject to the Freedom of Information Act 2000. In the interests of transparency, the SRA operates a Freedom of Information (FOI) Code of Practice. If either party receives a FOI request that includes a request for information originally sent by the other, the party dealing with the request will invite representations from the other party. Each will be mindful of the time limits involved and, in any event the decision to confirm or deny will be that of the original data controller. If a freedom of information request is received by the SRA that relates to the IFB's

information then the SRA will inform IFB, and invite representations on the potential impact of the disclosure.

Costs/charges

33. No charges will be made.

Resolving issues

34. Issues and problems that arise between the two parties relating to this Memorandum will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.
35. The respective representatives will try to resolve any dispute within 14 days of referral. In the event that the dispute is not resolved then the parties will attempt to settle it by a mediator to be agreed by the parties and in default of agreement to be appointed by the Information Commissioner.

Duration and Termination

36. This Memorandum will remain in force until terminated by either party. Either party may terminate this Memorandum on reasonable written notice of not less than 3 months to the other at any time during its duration. On expiry of the notice it will become null and void. The Memorandum will be reviewed every two years or earlier at the written request of either party.
37. Any changes to this Memorandum may be agreed between the parties in writing.

Transparency

38. This Memorandum may be published as the parties separately see fit.

Signatories



for SRA Date 2 May 2019

Name: Carol Westrop
Description: Head of Legal Policy



2 MAY 2019
Date

..... for IFB
Name: Stephen Dalton
Description: Head of Intelligence